IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 497 of 1988

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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SURAIBAI DOLUBHA & 1 - Appellant(s)
Versus
JAMNADAS RAMJI & 1 - Defendant(s)

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Appearance :
MRS NIRAV THAKKER for Appellant(s) : 1 - 2.
MR JAYANT P BHATT for Defendant(s) : 1,
MR NAGIN N GANDHI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2006

ORAL JUDGMENT

1.0 By way of this appeal the appellants have challenged the judgment and award of the learned Civil Judge (Senior Division/Junior Division) and Ex. Officio Commissioner for Workmen's Compensation (for short, 'the Authority'), Dwarka passed in W.C.C. No.4 of 1985 dated 7th September, 1987.

2.0 The brief facts of the case are that

deceased-Dolubha was working with the opponent No.1 as driver. On 15.10.1984, when the deceased was trying to repair the truck, he met with an accident and expired. Therefore, the present appellants being heirs and legal representatives of the deceased send a notice dated 23.11.1984 claiming an amount of Rs.83,968/- by way of compensation. Since, the opponents failed to take any action, the appellants filed an application before the Authority.

2.1 In the said application, after hearing the parties, the Authority passed the judgment and award which is under challenge in this appeal.

3.0 Heard, learned Counsel for the parties. It is not in dispute that the deceased was an employee of the opponent No.1. The said fact has been admitted by the opponent No.1-himself vide his written statement(Exh.18). On perusal of 'Panchnama' of the scene of offence (Exh.36) and post-mortem report of the deceased (Exh.33) it

clearly transpires that while the deceased was trying to repair the truck on the day of accident in question, the jack fell down and on account of that he died. The said fact has not been controverted by the opponent No.1 in his reply to the notice dated 23.11.1984. I am, therefore, of the opinion that the Authority has rightly come to the conclusion that since the deceased expired during the course of his employment with the opponent No.1, the appellants are entitled for compensation.

3.1 While considering the aspect of compensation, the Authority has looked into the medical and other evidence available on record. Looking to the nature of injuries caused to the deceased and considering the fact that he was earning Rs. 480/- per month, the compensation awarded by the Authority, in my opinion, is just and reasonable. No case has been made out by the appellant for enhancement of the amount of compensation.

3.2 However, as regards the contention of the learned Advocate for the appellant that in view of the decision of the decision of this Court passed in the case of ***"Vagher Mamad Husein Gadh Vs. Secretary, Gujarat Electricity Board, Baroda and other"*** reported in 1996 LAB I.C. 368 the Authority ought to have awarded compensation from the date of issuance of notice to the opponent No.1 i.e. from 23.11.1984 is concerned, the same requires to be accepted. In that decision this Court observed that under Section 4A(3) of the Workmen's Compensation Act (8 of 1923)in case of delay in payment of compensation from the date it fells due from the date of accident arising in the course of employment or has arisen out of employment, the employer would be liable to pay interest immediately from expiry of 30 days from the date of accident till final payment under award along with penalty. In the case on hand, since the opponent No.1 was aware of the death of the Dolubha and the fact that he had received notice issued by the appellants claiming compensation, it was incumbent on him to deposit

the amount in question. I am, therefore, of the opinion that the ends of the justice would met by awarding compensation from the date of issuance of notice i.e. 23.11.1984.

4.0 In the result, the appeal is allowed to the aforesaid extent. The appellants will be entitled for compensation from the date of issuance of notice i.e. 23.11.1984. The judgment and award of the learned Civil Judge (Senior Division/Junior Division) and Ex. Officio Commissioner for Workmen's Compensation (for short, 'the Authority'), Dwarka passed in W.C.C. No.4 of 1985 dated 7th September, 1987 is modified to the aforesaid extent. Rest of the judgment and award is confirmed. No order as to costs.

(K. S. Jhaveri, J.)

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